California Regional Water Quality Control Board

Los Angeles Region

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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March 28, 2005

Mr. James F. Stahl, Chief Engineer and General Manager
County Sanitation Districts of Los Angeles County
1955 Workman Mill Road
Whittier, CA 90601-1400

RESPONSE TO COMMENTS ON 01/12/05 TENTATIVE WASTE DISCHARGE REQUIREMENTS (WDR) AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT RECEIVED ON MARCH 11, 2005 – CITY OF LOS ANGELES, TERMINAL ISLAND TREATMENT PLANT (NPDES PERMIT NO. CA0053856, CI-2171)

Dear Mr. Stahl:

Thank you for your comments to the above-referenced WDR and NPDES permit. The following are the Los Angeles Regional Water Quality Control Board (Regional Board) responses to your comments provided on March 11, 2005:

*A. **Comments on Mixing Zone and Dilution Credit***

Although the City of Los Angeles conducted mixing zone and dilution credit studies assuming 5 scenarios of discharge, reuse and brine discharge to determine acute and chronic dilution ratios, and this study was subsequently partially approved by the State Water Resources Control Board (State Board), the Los Angeles Regional Water Quality Control Board (Regional Board) selected the most conservative dilution ratio under any scenario to use for both acute and chronic dilution ratios. Per the Tentative Permit, the allowed dilution is 61, assumes that 22.2 MGD of reverse osmosis treated water is diverted for reuse, approximately 7.8 MGD of brine is produced and only 7.8 MGD of effluent from the TITP is discharged to the Los Angeles Harbor. (Based on the studies, the determined acute dilution ranged from 61 to 86 and the chronic dilution from 153 to 215). The Regional Board states on page 9 of the Tentative Permit that a dilution value of 61 will be used for both chronic and acute dilution for protection of aquatic life, human health and receiving water quality and for the consideration of simplicity. Although the Tentative Permit indicates that the State Board suggested the use of the same dilution ratio for the adjustment of both chronic and acute criteria/objectives, this approach appears to be an over simplification actual conditions by the Regional Board. This results in limits that are far more restrictive than necessary and not reflective of actual discharge conditions, since the level of reuse that is used to determine that dilution ratio is not occurring and may not occur for a number of years. A more appropriate approach would be to allow the dilution ratios used to calculate effluent limits to reflect the actual discharge/ reuse scenario. In order to implement this approach, the Regional Board should identify final effluent limits that apply

until 2009 or for the life of the permit using current dilution ratios, and could identify in the Permit Findings another set of limits that are intended to apply from 2009 (or the effective date of the next permit, whichever comes first) through 2020 that are calculated using the dilution ratios that are consistent with the City of Los Angeles water reuse projections (as described on page 8 of the Tentative Permit). In other words, the dilution ratios used should reflect the conditions expected to occur during the life of the permit, and, since the proportion of effluent recycled is expected to change over time, should be reexamined prior to issuance of the next permit.

In addition, Footnote 9 on page 30 of the Tentative Permit states that no dilution credit is provided for effluent limits if the minimum detection limit used for analyzing the constituent in the receiving water is higher than the water quality objective. This footnote was applicable to the cyanide and dieldrin final effluent limits, which were not detected in the receiving water. First, because the State Board recently amended the SIP to modify the reasonable potential procedures (Section 1.3) so that effluent limits are not required solely based on ambient background concentration levels, it is not clear whether it is even necessary to include both of these limits in the permit. Instead, for those constituents for which limits were included solely based on ambient background concentration data, we recommend that the Regional Board include the limits with a footnote indicating that the limits will not be in effect once the new SIP amendment takes effect. Second, for limits where there are also data indicating that the substance was detected in the effluent, the final effluent limits should be revised to reflect the applicable dilution credit, since there is nothing whatsoever in the SIP to indicate that dilution credits should not be applied in cases where the detection limit used for analyzing the constituent is higher than the water quality objective. This practice adds a level of conservatism that may not be necessary as there isn't sufficient information that indicates a problem in the receiving water.

Response: The dilution ratios of Cases A and B are based on the tertiary flow of 17 mgd with the different factors. The current quantity of tertiary-treated effluent discharged into the Harbor fluctuates and ranges between 15 and 23 mgd. The dilution ratio study did not provide sufficient information to cover the current daily maximal flow. Therefore, for the protection of aquatic life, human health, and receiving water quality, the most conservative dilution credit of 61 was chosen for the acute and chronic situations, for calculating the final effluent limits.

Regional Board staff disagree with using chronic dilution credits. For example, a dilution credit of 215 is based upon the use of the 0.4 contour, which actually extends beyond the monitored area (See attached Fig. 2, compared with the NPDES water quality sampling stations in Fig. 2-3 with Fig 3-2 of the Mixing Zone Study). The 0.4 contour line extends north and eastward beyond the current monitoring area. Additionally, Fig.3 provided by the State Board is used to estimate the three residence times of drifting organisms with different contour lines. There is no information available for the possible impacts of chemicals on these organisms during their stay within each contour. Therefore, the higher chronic dilution credits have not been granted.

We have found no compelling evidence to change the dilution ratios. If the City provides additional data, which support a different dilution ratio and shorter residence time, the permit can be reopened. There is no change warranted in response to the comment.

The recently amended SIP by the State Board has not yet been promulgated. Therefore, the Regional Board staff will continue to use the same methodology applied in all recently adopted POTW NPDES permits, and requests the Discharger to work with the laboratory to lower detection levels to meet applicable and reliable detection limits, if the minimum detection limit used for analyzing the constituent is higher than the water quality objective. We have revised Footnote [9] by adding "The Discharger shall collect monthly receiving water data for one year. Once the data are available, the permit will be reopened and the dilution ratio for these constituents may be granted, if the City demonstrates that the concentrations of these constituents in the receiving water are less than the relevant WQOs."

Modification: No change on dilution credit is warranted. Footnote [9] of Section I.2.B.b and Section XI.6.E of the accompanying Permit and Fact Sheet, respectively, has been revised.

B. Comments Related to Toxicity Provisions

Comment 1: The chronic toxicity accelerated monitoring trigger should be applied to the receiving water test results only, and not to the effluent test results.

The 1994 Water Quality Control Plan for the Los Angeles Region (Basin Plan) states that there shall be no chronic toxicity in ambient waters outside mixing zones. In the Tentative Permit, receiving water chronic toxicity is measured directly at three stations surrounding the outfall. Therefore, exceedance of the 1.0 TUc monthly median monitoring trigger can be directly assessed in the receiving water and should be the basis for accelerated monitoring or TRE initiation. The draft permit currently applies the 1.0 TUc monthly median monitoring trigger on 100% effluent (i.e. without considering the dilution that occurs within the mixing zone) despite the State Board's approval of a dilution ratio study conducted by the City of Los Angeles which established that "The most conservative dilution credit of 61 was chosen for calculating the final effluent limitation for the purpose of protecting aquatic life, human health, and receiving water quality, and for the consideration of simplicity" (page 9, 25, Tentative Permit). The presence of toxicity in 100% effluent does not predict whether toxicity will exist in ambient waters after mixing. Given the magnitude of dilution acknowledged to occur in the receiving water, it does not make sense to require accelerated monitoring (and associated TREs) that would have to be conducted in response to end of pipe toxicity, unless there is also receiving water toxicity observed at the same time.

It is more appropriate to apply the 1.0 TUc monitoring trigger to the receiving water tests (as proposed in the Tentative Permit) and only monitor the effluent toxicity to provide information regarding the source of any receiving water toxicity observed. Towards this end, it is important that the effluent bioassays include effluent concentrations, which are representative of the mixing zone associated with the discharge. Therefore, in addition to

testing 100 % effluent (or 60 % effluent for abalone tests) to measure end of pipe toxicity, 1.64 % effluent should also be tested to measure toxicity after mixing.

Response: The dilution credit of 61 was not applied to every pollutant/constituent. As stated previously, in Regional Board staff's response to the City's comment number 46, information regarding chronic toxicity in the receiving water is not available. Please refer to the Table titled, *Response to Bureau of Sanitation Comments On the 03/11/05 Terminal Island Treatment Plant Tentative NPDES Order*, for further clarification to this and other related comments. Consistent with the State Board's precedential Order No. WQO 2003-0012 [SWRCB/OCC Files A-1496 & A-1496(a) – Long Beach and Los Coyotes WRP Petitions] and consistent with other non-ocean-discharge POTW permits, the chronic toxicity accelerated monitoring trigger will be applied to the effluent, in conjunction with a narrative chronic toxicity effluent limitation.

Modification: No change is warranted.

Comment 2: The Permit Should Follow EPA's Recommendations and Specifically Require the Use of Point Estimates for Analyzing Toxicity Test Data

The use of hypothesis testing to analyze chronic toxicity tests, while not specifically described in the Tentative Permit, is implicitly required by the way the toxicity requirements are written (e.g. the definition of TUc). We request that these requirements be rewritten to instead require the use of point estimates (i.e. IC25) to calculate TUc values for compliance monitoring purposes. The problems associated with the use of hypothesis tests for toxicity compliance determination in the NPDES program have been well documented and recognized by EPA. Hypothesis tests result in an inconsistent definition of toxicity between tests and laboratories, statistically invalid results (even following conversion to TUs) for reasonable potential determination and multiple test averaging, and an inherent disincentive to minimize within test variability. When effect based statistics, such as point estimation, are used to express toxicity results, all of these problems are alleviated.

For these reasons, EPA has consistently recommended the use of point estimates (e.g. IC25) rather than hypothesis tests to analyze whole effluent toxicity data since the issuance of the "Technical Support Document for Water Quality-based Toxics Control " (TSD; EPA/505/2-90/001, page 6) in 1991. In the TSD, the EPA discusses the relative merits and limitations of both techniques and concludes, "comparisons of both types of data indicate that an NOEC derived using an IC25 is approximately the analogue of an NOEC derived using hypothesis testing. For the above reasons, if possible, ***the IC25 is the preferred statistical method for determining the NOEC****" (emphasis added). In subsequent method protocols and rule-making, the EPA has continued to voice the preference for point estimates in the analysis of toxicity data. For example, in the final rule (Federal Register Vol 67, No. 223, Tuesday, November 19, 2002) the EPA confirms that* ***"as previously stated in the method manuals (USEPA, 1993; USEPA 1994a; USEPA 1994b) and the EPA's Technical Support Document (USEPA 1991), EPA recommends the use of point estimation techniques over hypothesis testing approaches for calculating endpoints for effluent toxicity tests under the NPDES Permitting Program"*** *(emphasis added)*

*(http://www.epa.gov/fedrgstr/EPA-WATER/2002/November/Day-19/w29072.pdf, pg 69958). Following promulgation of the rule, new method manuals were issued which, again, recommend the use of point estimate procedures rather than hypothesis tests. Specifically, the newest USEPA marine chronic toxicity test methods manual discusses the choice of statistical analysis and states "**NOTE: For the NPDES Permit Program, the point estimation techniques are the preferred statistical methods in calculating end points for effluent toxicity tests**" (http://www.epa.gov/WET/disk1/ctm.pdf, pg 44) The bold was NOT added to this document for emphasis, but appears in bold in the manual. Identical language and emphasis appears in the newest EPA freshwater chronic toxicity test methods (http://www.epa.gov/WET/disk3/ctf.pdf, pg. 41).*

We encourage the Regional Board to follow these strong recommendations by the EPA and require the use of and IC25 for evaluating chronic toxicity data in this permit.

Response: Regional Board staff continue to disagree with the County Sanitation District's recommendation to use the Inhibition Concentration (IC25) approach. Instead, Regional Board staff elect to use the hypothesis testing statistical technique (reported as NOEC or No Observed Effect Concentration) in establishing the test statistical endpoint. NOEC is an appropriate method of calculating toxicity which has been used in all Los Angeles Region NPDES permits and in State Guidance, (e.g. the Ocean Plan) and which was approved by the United States Environmental Protection Agency (USEPA). There are statistical advantages and disadvantages to both the NOEC and IC25 methods, and both are appropriate in the regulatory program. While, often, a calculated NOEC is roughly equivalent to an IC25, we cannot simply substitute one for the other. To establish an IC as a permit limit would require determining if 25% is really the most appropriate concentration to use as a regulation limit in our Region. Because it could, conceivably, have significant consequences, the Los Angeles Regional Board and the USEPA Region 9 do not advocate the usage of the IC25 on an ad hoc basis (i.e., permit specific). Rather, this should be evaluated and applied on a statewide basis in the development of the State's Inland Freshwater Standards or Toxicity Implementation Procedures Guidance. The State Board is in the process of revising the SIP with respect to chronic toxicity. Until the State Board's Policy indicates otherwise, our NPDES permits will continue to contain NOEC language.

Modification: No change is warranted.

Comment 3: Approved Acute Toxicity Test Methods in 40 CFR Part 136 Include the Test Species Required in the Tentative Permit, Reference to Chronic Methods Should be Removed

The Tentative Monitoring and Reporting Program (MRP) (page T-11, section 4.A.a) refers to two different chronic toxicity test procedures manuals (EPA/821/R-02/014 and EPA/600/R-95/136) for performing acute toxicity tests, and one of these methods manuals has not been promulgated (EPA/600/R-95/136). However, the three marine organisms for which monitoring is required in the permit for measuring acute toxicity (topsmelt, Mysidopsis bahia, and Menidia beryllina) are all approved for use in the NPDES program in the promulgated EPA acute toxicity test methods manual (EPA/821/R-02/012). The Mysidopsis and Menidia

methods are considered "principal" test organisms while topsmelt is listed as an "alternative acute toxicity test species." There are many important differences between acute and chronic test procedures including feeding rates and frequency, test solution renewal frequency, test duration, and test temperatures. Acute and chronic methods were never intended to, nor should they, be used interchangeably. Marine discharge permits should require the exclusive use of the approved EPA acute toxicity test methods for all three marine test species.

Response: The MRP contains the following language on page T-12:" "In lieu of conducting the standard acute toxicity testing with topsmelt, the Discharger may elect to report the results or endpoint from the first 48 hours of the chronic toxicity test…"That is why chronic toxicity test methods are referenced in the Acute Toxicity Section of the MRP. Similar language is found in other MRPs. USEPA finds it acceptable to use the Chronic West Coast Marine Test Method, *Short-Term Methods for Estimating Toxicity to Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* [EPA/600/R-95/136].

Modification: No change is warranted.

Comment 4: Approved Chronic Toxicity Test Methods in 40 CFR Part 136 Should be Listed as Provisional Test Methods

Many of the West Coast test methods utilize wild-caught organisms for testing which are not available and/or reproductive under certain conditions and seasons. Realizing this methodological limitation, the California Ocean Plan allows two 40 CFR Part 136 approved chronic test methods (inland silverside and Mysidopsis bahia) to be used when West Coast test organisms are not available (page 34, Table III-1) for marine tests. The Terminal Island Tentative MRP requires the exclusive use of the West Coast methods (refer to page T-12, section B.a) but should be modified to include the 40 CFR Part 136 approved methods (EPA/821/R-02/014) as a provisional methods manual consistent with the Ocean Plan.

Response: Regional Board staff agree that the City has the option of using a marine test species other than the red abalone, as specified in Section I.2.J.c. of the tentative Order. The City, therefore, may use EPA's *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, October 2002 (EPA-821-R-02-014). However, please notice that the Ocean Plan does not apply to the TITP's discharge.

Modification: The first paragraph of Section B.a. of the MRP will be revised as follows (the additional language appears as underlined text for illustration purposes only): "The Discharger shall conduct critical life stage chronic toxicity tests on 24-hour composite 60% or 100%* effluent samples in accordance with EPA's *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R-95/136, 1995), <u>EPA's *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, October 2002 (EPA-821-R-02-014),</u> or current version.

Comment 5: Accelerated Testing Requirements Should be Modified in Accordance with Recent EPA Guidance

The requirement to conduct six additional tests over a six week period (i.e. accelerated monitoring) in response to exceedance of acute and chronic toxicity triggers is excessive and inconsistent with recent EPA guidance, which recommends six additional tests to be conducted over a 12 week period beginning within two weeks of the initial exceedance (page 32). The accelerated monitoring requirements in the Terminal Island Tentative Permit (page 31, section I.c.; MRP page T-11, section 4.A.a; MRP page T-12, section 4.B.a) should be modified to concur with this draft EPA guidance.

Furthermore, notification of a failing acute toxicity result 24-hours after test completion and subsequent re-testing within 3 business days after receipt of the result appears to be an unreasonable expectation. Unplanned re-testing (in response to a "failed" test) involves coordinating sample collection, pick-up, and delivery as well as obtaining test organisms from in-house cultures or outside providers and organizing needed staffing on short notice would make re-initiation within three business days unreasonable. A more reasonable requirement would be to require test result receipt within three business days after test completion and re-initiation of any required test within one week after receipt of the result.

Response: Regional Board staff has revised the following, as requested by the City "…the Discharger shall conduct six additional tests over a ~~6~~12-week period. The Discharger shall ensure that results of a failing acute toxicity test are received by the Regional Board within 24 hours of completion of the test, and the additional tests shall begin within ~~3~~5 business days of receipt of the result."

Modification: Changes have been made.

C. ***Comments on the Monitoring and Reporting Program (MRP)***

Comment 1: The permit assumes elements that may or may not be contained in future Southern California Bight Regional Monitoring Programs

The Southern California Bight Regional Surveys (Bight Surveys, e.g., the 1994 Southern California Bight Pilot Project, Bight'98, Bight'03) are governed by an independent steering committee that develops the study objectives and questions to be addressed and oversees the program's implementation. While some components are basic to the on-going assessment goals of the Bight Survey and can be anticipated elements in the future, others cannot. Among those that can be anticipated are benthic sediment monitoring (biota and chemistry). Other elements are not as certain to be included in the future. The Districts recommend that the Tentative Permit not anticipate the particulars of the Bight Surveys (e.g., item IV.5.A., pg T-7 of the Tentative MRP) in advance or, barring that, include explicit language that provides the discharger with an exemption from anticipated elements of regional monitoring that do not in fact materialize.

Response: The State of California created a Coastal Fish Contamination Program (CFCP) in 1998. The objective of this Program was to obtain data to be used by OEHHA for human health assessments of fish species for coastal waters in areas commonly utilized by sport fishermen. After a few years, dedicated funding for this statewide monitoring program disappeared. The CFCP, as well as the State Mussel Watch and Toxic Substances Monitoring Programs, are included within the State's Surface Water Ambient Monitoring Program (SWAMP) and must compete for limited funding resources.

Currently, SWAMP is underfunded and insufficient funding is available to conduct the CFCP on a statewide basis. If such a statewide program is reinstituted in the future, the City of Los Angeles will be required to participate. However, it is likely that participation in the Local Seafood Safety Survey would be adequate to cover most, if not all, of this obligation. Even if the statewide regional survey fails to materialize, the Local Seafood Safety Survey recommendations from the Santa Monica Bay Restoration Project included a broad scale resampling of several species at least once every 10 years; consequently, this element is included as a Regional Seafood Safety Survey monitoring requirement.

The Regional Board anticipate that some type of Regional Predator Risk survey will be retained in future Bight Regional Surveys, given that this element was monitored during Bight'98 and Bight'03. Should this type of survey be discontinued, the City may consult with the Regional Board to reallocate these resources.

Modification: No change is warranted.

Comment 2: The permit inappropriately ties the level of participation in the Santa Monica Bay Restoration Project's (sic) Seafood Safety Survey to the 1998 Bight Regional Bioaccumulation Survey.

The Santa Monica Restoration Commission (SMBRC) has proposed a monitoring design suitable for assessing local seafood safety within Santa Monica Bay, off Palos Verdes, and within Los Angeles Harbor. Participation in this program by the City of Los Angeles has been proposed in the Tentative NPDES Permit for the Hyperion Treatment Plant (dated September 21, 2004). The Districts have previously (January 2003) proposed to the Regional Board staff that we also participate in this same survey, coordinating this effort with the City of Los Angeles. The Tentative Permit for TITP ties the City's level of effort in this program to that of the "1998 Bight Regional Bioaccumulation Survey" (refer to item IV.5.B., pg T-7 of the Tentative MRP). The goals and design of SMBRC program are entirely different from the bioaccumulation studies conducted during the 1998 Southern California Bight Regional Monitoring Program, which were focused on questions of predator risk and pollutant mass balance. The level of participation necessary to successfully implement the SMBRC program should not be tied to this very different design. The Districts recommend that reference here to the level of effort be deleted and instead dealt with in the Receiving Water Monitoring Requirements (Section VII) (see also Comment 6 below).

Response: Regional Board staff agree. The language has been revised as "Santa Monica Bay Restoration Project's Seafood Safety Survey – the level of participation shall be ~~similar to that provided for the 1998 Regional Bioaccumulation Survey~~ equivalent to that outlined by the Santa Monica Bay Restoration Commission's Local Seafood Safety monitoring design".

Modification: Changes have been made.

Comment 3: Benthic sampling at a biannual (i.e., summer and winter) frequency is inconsistent with Model Monitoring Program guidance and should be reduced to an annual summer survey

The Model Monitoring Program guidance[1] (MMP) recommends (refer to Page 61 of that document) that trend monitoring within sediments be conducted at frequency of once per year and that that survey be conducted during the summer months, noting that "(g)reater frequency could be used, but seasonal variability will compound one's ability to detect biological trends". The requirement that benthic sampling be conducted biannually (i.e., items VII.2.D.a.i. & b.ii., pg T-24 of the Tentative MRP) should be revised to annual sampling to be conducted during the summer.

Response: Regional Board staff agree.

Modification: Change has been made.

Comment 4: Demersal Fish and Invertebrate sampling at quarterly frequency is inconsistent with MMP guidance and should be reduced to annual (summer) or semiannual (summer & winter).

The MMP recommends (refer to page 78 of that document) that local trend monitoring of demersal fish and invertebrates be conducted at frequency of once per year during the summer months, unless power analysis dictates a different optimum frequency. A power analysis requires that metrics of community change be specified, the desired level of change to be detected in the metrics be stipulated, and the confidence in that observation be defined. As none of the necessary elements of a power analysis to establish optimal survey frequency exists, the requirement that demersal fish and invertebrate sampling be conducted quarterly (i.e., item VII.2.D.c.i., pg T-25 of the Tentative MRP) should be changed to annual sampling during the summer. If a higher frequency is desired (which may be useful to maintaining technical skills necessary to conduct theses surveys), semiannual surveys in the summer and winter should be required.

Response: The City agrees to keep the current **"QUARTERLY"** monitoring frequency on Local Demersal Fish and Invertebrate.

[1] Schiff, K.C., J.S. Brown, and S.B. Weisberg. 2002. Model Monitoring Program for Large Ocean Dischargers in Southern California. Technical Report 357. Southern California Coastal Water Research Project. Westminster, CA. 101 pages.

Modification: Therefore, no change is warranted.

Comment 5: The Local Bioaccumulation Trends Survey design is not consistent with the MMP and confuses questions of trend monitoring with those of seafood safety monitoring.

Item VII.2.D.d. of the Tentative MRP (refer to pg T-25) is intended to address the question: "is fish tissue contamination in the vicinity of the outfall changing over time?". It appears that to answer this question, tissue levels of contaminants in the hornyhead turbot will be regularly assessed. This is consistent with the MMP guidance (refer to pg 79 of that document). However the Tentative permit goes on to require not hornyhead turbot monitoring but white croaker and another sport fish (suggesting kelp bass) as the target species. In addition, both muscle and liver tissue are to be analyzed for contaminant loads. The MMP recommends hornyhead turbot as the target species unless there is an existing historical data set on a different species. In addition, the MMP recommends that liver be the target tissue, again, unless there is no historical data on this tissue with which to assess trends. Liver is preferred because its affinity for bioaccumulating chemicals provides a stronger signal than other tissues. The purpose of this program is to monitor trends in a sentinel species and tissue, not to assess levels in edible tissues of specific sport-caught fish. The design should be optimized for detecting that trend. The Districts recommend that the Regional Board reconsider the tentative design in light of the MMP guidance and assure that the local trends monitoring program focuses on a single species and tissue that best optimizes the ability to answer the question posed in the design, and that the question of local seafood safety be addressed in a survey design specific to that purpose.

Response: Horneyhead turbot is still selected as a testing species with this MRP. However, "white croaker" and "another sport fish" have been removed.

Modification: Changes have been made.

Comment 6: The Tentative MRP does not include a Local Seafood Safety Survey consistent with the tentative NPDES permit monitoring program for the Hyperion Treatment Plant (dated September 21, 2004) and with the SMBRC design for such a survey.

A Local Seafood Safety Survey consistent with the SMBRC design and coordinated with that proposed in the tentative permit for the Hyperion Treatment Plant appears to be missing or confused with a regional seafood survey at the Southern California Bight scale. The MMP (refer to pg 88 of that document) recommends that the SMBRC design be used to assess the safety of seafood within an area where tissue advisories are in effect. The coastal waters of Los Angeles County, including Los Angeles Harbor, are such an area. The monitoring and reporting program included in the Hyperion tentative permit and as earlier purposed by the Districts (January 2003) for inclusion in future JWPCP permits is appropriately designed per the MMP and the SMBRC to address questions of local seafood safety. These coordinated surveys assume that the design will be extended to the Los Angeles Harbor area as well (presumably through the TITP NPDES permit).

The Districts recommend that Regional Board staff closely review the SMBRC design and assure that the TITP permit include a survey design consistent with that document. The Districts presume (and have proposed) that the intent is to have a coordinated program implemented through three different permits (Hyperion, JWPCP and TITP). If the permits are to be used as the implementing device, it is important that the language in each permit be consistent to allow this program to proceed properly and to the benefit of all. It may be preferable at this point to generalize as to the specifics of the survey, citing the SMBRC design document (which is very detailed) for the required design to be implemented. Alternatively the following design description presented in Attachment A could be inserted in the tentative TITP NPDES permit.

Response: Regional Board staff agree to add "Local Seafood Safety Survey".

Modification: Changes have been made.

Comment 7: The Regional Seafood Safety Survey as described should be not be included as specific monitoring elements in this proposed permit. Instead it should be replaced by a Local Seafood Safety Survey as discussed in Comment 6 above.

The inclusion of a requirement that the City of Los Angeles participate in a Regional Seafood Safety Survey is unjustified for two reasons: (1) The Regional Board assumes that the a "Regional Steering Committee" (presumably associated with the Southern California Bight regional surveys) or OEHHA will step forward and implement a SCB-scale survey of edible tissue contaminant levels in fish at some point during the life of the permit. This is not certain to happen. A speculative requirement such as this leaves the discharger vulnerable in the event that such a survey is not implemented. (2) The City of Los Angeles will be required, as proposed in the tentative Hyperion NPDES permit (dated September 21, 2004), to participate in a local (but regional) seafood safety survey that, if fully implemented per the SMBRC monitoring design (see Comment 6 above), will cover all species within the entire Santa Monica Bay, Palos Verdes Shelf, and Los Angeles Harbor that are currently subjects of consumption advisories, as well as other species that are consumed but not covered by advisories. This covers nearly the entire open coast area of the Southern California Bight in which fish advisories currently exist. The stipulated design requires surveys biennially over the course of the permit. If the speculative SCB-scale survey were to materialize, the data from the "local" seafood safety survey would constitute a substantial portion, even most, of the data that would be expected to be collected in the larger scale survey. To require the discharger to further participate beyond this level is duplicative and an inefficient use of monitoring effort. The Districts request that reference to a Regional Seafood Safety Survey be deleted from the Tentative MRP and that instead it include a requirement to participate in the implementation of a Local Seafood Safety Survey per the SMBRC design as proposed in the tentative Hyperion NPDES permit and as previously proposed to the Regional Board staff by the Districts for inclusion in the next JWPCP NPDES permit.

Response: The State of California created a Coastal Fish Contamination Program (CFCP) in 1998. The objective of this Program was to obtain data to be used by OEHHA for human

health assessments of fish species for coastal waters in areas commonly utilized by sport fishermen. After a few years, dedicated funding for this statewide monitoring program disappeared. The CFCP, as well as the State Mussel Watch and Toxic Substances Monitoring Programs, are included within the State's Surface Water Ambient Monitoring Program (SWAMP) and must compete for limited funding resources.

Currently, SWAMP is underfunded and insufficient funding is available to conduct the CFCP on a statewide basis. If such a statewide program is reinstituted in the future, the City of Los Angeles will be required to participate. However, it is likely that participation in the Local Seafood Safety Survey would be adequate to cover most, if not all, of this obligation. Even if the statewide regional survey fails to materialize, the Local Seafood Safety Survey recommendations from the Santa Monica Bay Restoration Project included a broad scale resampling of several species at least once every 10 years; consequently, this element is included as a Regional Seafood Safety Survey monitoring requirement.

The Los Angeles Regional Board and USEPA anticipate that some type of Regional Predator Risk survey will be retained in future Bight Regional Surveys, given that this element was monitored during Bight'98 and Bight'03. Should this type of survey be discontinued, the City may consult with the Regional Board and USEPA to reallocate these resources.

Modification: No change is warranted.

Comment 8: The Regional Predator Risk Survey should not be included as specific monitoring elements in this permit.

The requirement for participation in a Regional Predator Risk survey is speculative and should be removed from the Tentative MRP. A predator risk survey was included as an element of the Coastal Ecology Workplan for the Southern California Bight 1998 and 2003 Regional Monitoring Programs. The City of Los Angeles contributed analytical resources to that effort. However, it is entirely uncertain that a predator risk survey will be repeated in the next Bight regional survey. Regardless, since the Bight surveys are governed by an independent steering committee that develops the study objectives and questions to be addressed and oversees the program's implementation, there are few elements of these monitoring programs that are so basic that they can be anticipated to be included in each successive regional survey. Predator risk assessment is not one of these elements. The Districts recommend that the Tentative Permit not anticipate the particulars of the Bight Surveys in advance or, barring that, include explicit language that provides an exemption from anticipated elements of regional monitoring that do not in fact materialize.

Response: The City of Los Angeles shall participate in future Bight survays at the level of effort provided to past surveys. The monitoring elements listed (including the predator fish survey) were intended as example, rather than a mandated list of programs to be implemented.

Modification: No monitoring and Reporting Program previously have been changed in response to this comment.

Please note that our responses to comments from the City of Los Angeles are also enclosed as Attachments A. We believe that this letter has addressed your comments and suggestions.

If you have any further questions, please contact Don Tsai at (213) 576-6665, or the undersigned at (213) 576-6720.

Sincerely,

Blythe Ponek- Bacharowski
Acting Chief, Watershed Regulatory Section

Enclosures

cc: City of Los Angeles
Heal The Bay
Santa Monica BayKeeper